IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

RP.No. 927 of 2006()

AGAINST THE JUDGEMENT/ORDER IN MFA.862/2001
.....

: REVIEW PETITIONER/APPELLANT:

C.C. ISMAIL, S/O. LATE ABOOBACKER,
RESIDING AT ORUTHODY HOUSE, P.O.VALLIKUNNU NORTH,
VIA. KADALUNDI, KOZHIKODE.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: RESPONDENTS:
---

1. MANAGING DIRECTOR,
P.E.S. ENGINEERS (PVT) LIMITED, 1ST FLOOR,
PANCOM CHAMBERS, RAJ BHAVAN ROAD, SOMAJIGUDA,
HYDARABAD.

2. KARNATAKA POWER CORPORATION LIMITED,
P.O. KADRA, KARWAR DISTRICT, UTTAR KARNATAKA.

3. M/S. ORIENTAL INSURANCE COMPANY LIMITED,
D.I. OFFICE, D.B.NO.II, BANK STREET, HYDARABAD.

BY ADV. SRI.MATHEWS JACOB

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B RADHAKRISHNAN, J.

==========

R.P NO.927 Of 2006 & C.M.A.No.1950 of 2006

In

M.F.A.No.862 of 2001

==========

Dated this the 25th day of January, 2007

O R D E R

This application for review of judgment dated 3.07.06 in M.F.A No.862/01 with application to condone delay are heard together.

2. The learned counsel for the review petitioner/appellant urged that the decision of the Apex Court in **Rathi Menon** v. **Union of India** 2001(2) KLT 12(SC) does not appear to have been brought to the notice of this Court while the judgment sought to be reviewed was delivered.

3. The case in hand arises under the Workmen's Compensation Act. In paragraph 2 of the judgment sought to be reviewed, I had noted that the learned counsel who argued the matter for the appellant was quite unable to push through the argument that disability of the appellant ought to have been determined as

100% on the basis of the decisions of this Court and also the statutory provisions governing the view at that point of time were four decisions. The Full Bench in (**1998(1)KLT 951)** had laid down that the amendment to the Workmen Compensation Act on the rate of compensation is not retrospective. That view is not at variance from what the Apex Court laid down in **K.S.E.B**.v.**Valsala** (1999(3) KLT 348 (SC). A Full Bench of this Court in **Vanajakshan** v **Joseph** (2003(2) KLT 462) laid down that the yardstick to determine the disability is not merely the disability to carry on with the avocation which the injured was carrying at the time of accident. In **Oriental Co**. v. **V.Mohammed** (2002 KLT 131) this Court stated that not withstanding the amendment is not retrospective, the liability to pay higher rate of interest on the compensation will accrue in cases where the compensation determined before was not paid before the amendment. It was in the backdrop of the aforesaid decisions that the appeal of the review petitioner did not find favour and was dismissed.

4. As is discernable from paragraph 33 of the judgment in Rathi Menon's case, in rendering that verdict under the Railway Accidents and and Untoward Incidents(Compensation)Rules 1990 (as amended in 1997), the Apex Court distinguished it from the provisions of the Workmen's Compensation Act by holding that the Scheme of the provisions under the Workmen's Compensation Act is materially different from the scheme indicated in Chapter XIII of the Railways Act. So much so, I do not find any ground to apply the ratio of Rathi Menon's case to determine the case in hand which arises under the Workmen's Compensation Act. No other grounds raised.

5. The impugned judgment is not vitiated on any ground to review the same.

Hence the applications to condone the delay and for review of the appeal are dismissed . No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

sj